

FEB 15 2006

IN GROUND ONE OF MY HABEAS PETITION I ALLEGED

AT BALTIMORE
CLERK OF DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

Denied Due Process of Law, and the right to a fair trial based on my trial attorney's affidavit that the arresting officer had alleged to him 14 months after my trial the prosecutor attempted to influence his testimony prior to trial and for use at trial.

That Affidavit raised four allegations of prosecutorial misconduct which occurred prior to trial. The basis of these allegations came from Officer Rubie who was the investigating officer, and voluntarily approached my trial attorney at a ballgame in Camden yards in April 1999 which was 14 months after my trial had concluded. This information was unknown to the defense, and prevented us from raising any of these allegations by Officer Rubie to Judge Howe who was the Original trier of Fact since Officer Rubie withheld this information from the defense until April 1999. Officer Rubie had 12 years experience when he made these complaints to my trial attorney.

The postconviction court (Judge Cadiñan) responded in error by saying at pages 15 and 16 of his Memorandum/Opinion:

"The petitioner failed to raise this issue on appeal therefore it may be deemed to have been waived. The petitioner asserts however the issue has not been waived because appellate counsel was ineffective for failing to raise this issue on appeal. The court will address the merits of the claim of appellate counsel's ineffectiveness later in this opinion..."

At pages 17 and 18, Judge Cadian went on to say in his Memorandum/Opinion:

"The only evidence offered is Mr. Anello's recollection of Officer Rubie's statements... Even if Mr. Anello's recollection of the exchange between himself and Officer Rubie at Camden yards is accurate, the statements do not establish that Mr. Norman violated any of the Rules of Professional Conduct... The petitioner has put forth no evidence that Mr. Norman committed prosecutorial misconduct or violated any of the Maryland Rules of Professional Conduct."

My trial attorney testified at page 31 of the postcon transcript:

"I have handled somewhere between 1000 to maybe 1300 criminal matters as a general practitioner of 25 years and I have never in those 25½ years had a police officer of any jurisdiction come up to me 14 months or so after a case and tell me my client had a raw deal. It was quite memorable. And before I wrote you, I discussed it with a couple of Judges, and a couple of lawyers, who are friends of mine, and the consensus was that I had to follow up and try to talk with him in a more conservative environment other than opening day of Oriole baseball and find out if it was a serious statement that he made to me and if it was, I then had a duty to tell you or your new attorney." SEE EXHIBIT 1

Anello was questioned about his recollection of the events by the Asst. State's Atty. and was asked if his photographic memory was "out of focus". Anello responded by saying at page 49:

"All due respect Mr. Roscher this never happened to me before. Nothing was out of focus. I am actually sorry the Officer even talked to me. It's not something you expect on opening day at Oriole Park something that never happened to me in 25 years. You remember something like that". SEE EXHIBIT 2

I also feel that Judge Cadigan's remarks at pages 17 and 18 are in error. Judge Cadigan stated:

"Even if Anello's recollection of the exchange between himself and Officer Rubie's statements at Camden Yards is accurate the statements do not establish that Mr. Norman violated any of the Rules of Professional Conduct..."

I believe Judge Cadigan to be in error again. To suggest that the statements by Officer Rubie to my trial attorney do not violate any of the Rules of Professional Conduct is in error and violates every principle of Due Process and Fair Trial under the U.S. Constitution. No Federal Prosecutor would ever be excused for making any of these same statements in a Federal Court.

Mr. Roscher cross examined Rubie regarding the Affidavit:

ROSCHER SAID: "There's a statement in the affidavit that says you said, "Look if Sal had been convicted of the handgun charges I probably would cooperate with you however, since he wasn't convicted of the handgun violation I really don't see how any harm was done by Mr. Norman. "Do you recall saying that" SEE EXHIBIT-3

RUBIE RESPONDED "I don't recall saying those words. I believe it might have been more in the line of saying, "hey what's the point he didn't get convicted of the handgun violation" responding to his thoughts on it. SEE EXHIBIT-3

Officer Rubie's assessment of "what's the point" and "I don't see how any harm was done" is in error. He fails to understand that the Prosecutorial misconduct begins with the attempt to influence his testimony. It is not dependent on whether or not I was convicted of the fictitious gun that was portrayed on National T.V. by one of the "hired actors". The affidavit by my trial attorney had claimed that Officer Rubie had alleged that the prosecutor attempted to influence his testimony.

Rubie's postconviction testimony also agree's not only with Anello's affidavit but also with Anello's testimony at page 41 when Anello said: SEE EXHIBIT-4

"He basically indicated to me that because you were found not guilty in regard to the handgun charges, that basically no blood no foul, that you know there was no harm done in that he never altered his testimony on the handgun at the urging of Mr. Norman...I tried to communicate to him that the mandatory portion of use of a handgun used in a felony changed the trial tactics and everything. If he knew that was true it should have been dismissed. It would have changed our election of a judge or jury trial. And he basically said to me at that point that he would have felt differently if you were convicted and would cooperate but in that you were not convicted of the handgun, he could not see how you were harmed. SEE EXHIBIT-4

I am asking the District Court to recognize that BOTH the postcon court, and the Attorney General have failed to recognize that it is uncontested that this information was withheld from the defense until April 1999. This was confirmed by Officer Rubie and Anello at the postcon hearing, and remains unchallenged by the Attorney General's Office. The memorandum/opinion of Judge Cadigan failed to recognize that we were prevented from raising any of this with Judge Howe who was the trier of fact. Therefore, the allegations by Officer Rubie to my trial attorney are EXTRINSIC to the RECORD since the trial court was unaware of these allegations as well.

BOTH the postcon court and the attorney general have failed to address that in my original habeas petition to this Court I cited U.S. Supreme Court case law, and precedent which I believe entitles me to the relief I prayed for. That case is Throckmorton v U.S., U.S. Cal, (1878) which deals with matters that are Extrinsic to the record. Throckmorton established that a New Hearing or Trial is warranted if one of the parties was prevented from presenting their case to the Original trier of fact who was Judge Howe. Throckmorton does not require for me to prove that Anello's testimony is more worthy of belief than Rubie, but I point out that Anello is an Officer of the Court and has been for the past 25 years years with an unblemished record. What Throckmorton requires is that I must show that we were PREVENTED from raising any of the issues raised by Anello in his Affidavit to Judge Howe who was the original trier of fact.

Throckmorton is clearly established federal law which deals with matters which are Extrinsic to the record which the postcon court had failed to recognize and failed to address. The purpose of Anello's Affidavit as an Officer of the Court was to let the Court know that the allegations by Rubie were unknown to us, and could not have been raised prior to trial since Officer Rubie withheld this information from the defense until 14 months after trial had concluded.

There is further case law dealing with matters that are Extrinsic to the record. See Tandra S. v. Tyrone W. 336 Md. 303, 638 A2d 439 (1994). That Court held in part:

"In determining whether or not extrinsic fraud exists, the question is not whether the fraud operated to cause the trier of fact to reach an unjust conclusion, but whether the fraud prevented the actual dispute from being presented to the fact finder at all."

In the instant case, the fact finder was Judge Howe, and since the allegations by Rubie to Anello took place prior to trial, no one can predict what Judge Howe would have done since we were prevented from raising it since it was withheld from us until 14 months after the trial had concluded.

I am also asking for this Court to recognize there is NO DISPUTE that there were three post trial conversations between Rubie and Anello. The postcon court only discussed the first meeting that took place at the ballpark. The second conversation was by phone when Rubie had agreed to meet Anello at his Office to continue their initial conversation regarding possible misconduct by the Prosecutor. Rubie acknowledged this at the postconviction when I questioned Officer Rubie. SEE EXHIBIT-5

"I just wanted to clarify one thing. When you first had the meeting with Anello at the ballgame, it was about three weeks later he called you on the phone according to his affidavit, and at that time you still had agreed to come down, you didn't have any reservations at that time. That's what the affidavit says and that's what you also agreed to is that correct. SEE EXHIBIT-5

Rubie responded by saying YES. This then led to the third and final conversation when Rubie called Anello one hour before the scheduled meeting, and told Anello that he was going to cancel the meeting based on the advice of an attorney friend of his.

The postcon court failed to acknowledge that when Rubie agreed to meet that he did so without any reservations or hesitation's of any kind as Rubie himself admitted to on EXHIBIT-5.

At the risk of repeating myself I would like to say that Mr. Anello was so concerned as an Officer of the Court that he had spoke with several Judges and Lawyers for their opinion prior to the affidavit and testified. SEE EXHIBIT-1

"I have handled somewhere between 1000 to 1300 criminal matters as a general practitioner of 25½ years and I have never in those 25½ years had a police officer of any jurisdiction come to me 14 months or so after a case and tell me my client had a raw deal it was quite memorable. And I before I wrote you, I had discussed it with a couple of judges, and a couple of lawyers who are friends of mine, and the consensus was that I had to follow up in a more conservative environment other than opening day of Oriole baseball, and find out if it was a serious statement that he made to me, and if it was I then had a duty to tell you or your new attorney."

I also ask the court to also look once more at EXHIBIT-2 when Mr. Roscher challenged Anello's memory of the initial conversation at the ballpark, and Anello testified by saying: SEE EXHIBIT-2

"All due respect Mr. Roscher this had never happened to me before. Nothing was out of focus. I am actually sorry the Officer even talked to me. It's not something you expect on opening day at Oriole park, something never happened to me in 25 years you remember something like that.

Back in March 2004 I submitted a series of exhibits. Those exhibits were copies of correspondence that I received or sent from the time of my direct appeal beginning in March 1998 to May 1999. Among those were two letters marked Exhibits 44 and 45 which were addressed to Mr. Greer who was my appointed appellate counsel. Both letters discussed Anello's post trial conversation with Officer Rubie at the ballpark. The court can see that I asked for Mr. Greer to call Anello's office for a more complete account of the conversation, and to amend my appeal so that the appellate court would be made aware of the allegations made by Rubie to my trial attorney concerning the prosecutor.

In ending my argument in Ground One I would also like for the District Court to make a determination if the Affidavit by Mr. Anello, and the Testimony by both Anello and Rubie at the postconviction hearing would amount to what is called a Brady Violation as was determined by the Supreme Court of the United States in Brady v. Maryland. I don't have the cite number but I would like to know the opinion of this court's opinion. I am throwing this out for the Court to consider since the Affidavit of my trial attorney establishes that Officer Rubie did not divulge this information until April 1999 which was 14 months after trial concluded, and that this information was about pretrial conversations between Rubie and the prosecutor. In addition I believe that the testimony by both Rubie and Anello does in fact establish that this information was withheld from us until long after trial ended. In fact Rubie did not deny that the prosecutor attempted to influence Rubie's testimony. His only reasoning in not cooperating with Anello is shown by examining EXHIBIT-3: Rubie testified that his reason for not cooperating with Anello was because in his mind I had not been convicted of the "handgun" violation.

ROSCHER SAID "There's a statement in the affidavit that says that you said, Look, if Sal had been convicted on the handgun charges, I probably would cooperate with you. However, since he wasn't convicted of the handgun charges, I really don't see how any harm was done by Mr. Norman. Do you recall saying that."

RUBIE RESPONDED: "I don't recall saying those words. I believe it might have been more in the lines of saying, "hey what's the point he didn't get convicted of the handgun violation, responding to his thoughts on it."

Therefore I believe from a layman's perspective that Officer Rubie's testimony under oath agrees with Anello's affidavit and testimony at the postconviction hearing. SEE EXHIBIT-4 and that this establishes a violation under Brady v. Maryland which has been a clearly established Federal law by the Supreme Court of these United States.

In my ORIGINAL habeas petition to this District Court one of my arguments appeared on PAGE 5 and discussed another U.S.S.Ct. decision in Geders v. U.S., 96 S.Ct. 1330, (1976) which I believe is directly on point with Officer Rubie's testimony that is contained in EXHIBIT-3. The Geders court held the following:

"An attorney must respect the important ethical distinction between discussing testimony and improperly seeking to influence it. Any violations of the strictures of the ABA Code of Professional responsibility against fraudulent conduct or use of fraudulent or perjured testimony constitutes a most serious breach of the attorneys duty to the court to be treated accordingly..."

Anello's affidavit stated that Rubie complained to him that Norman attempted to influence his testimony, and EXHIBIT-3 which is Rubie's testimony shows that is what Norman attempted to do. Rubie failed to see that because he put the emphasis on that I was not convicted of the handgun charges.

The Geders court discussed what action should be taken by saying:

"The law and the disciplinary rules prohibit the use of fraudulent, false, or perjured testimony or evidence. A lawyer who participates in the introduction of such testimony or evidence is subject to discipline. Disciplinary Rule 7-102 (A)(7)(8) of the code provides and is relevant to my own case:
(A) A lawyer shall not participate in the creation or preservation of evidence which he knows or it is obvious that the evidence is false."

Mr. Norman's participation in the video should suffice since it was a fraudulent portrayal. This was raised by Anello to Judge Howe in his MOTION to Dismiss, and at the HEARING, and was raised by me to Judge Cadigan as well as TWO pro se applications for leave to appeal which were denied without comment.

Disciplinary Rule 7-102(A)(7) holds that:

"A lawyer shall not counsel or assist in conduct that the lawyer knows to be illegal or fraudulent."

Anello's Affidavit concerning the "coaching" of Mr. Hogg's testimony by Mr. Norman should suffice as a violation of DR 7-102.

Disciplinary Rule 7-102(A)(8) holds that:

"A lawyer shall not knowingly engage in conduct contrary to the Disciplinary Rules. Any violations of these strictures constitute a most serious breach of the attorneys duty to the court to be treated accordingly."

Mr. Norman has been a prosecutor for many years, and knows that he should not have attempted to influence Officer Rubie's testimony. EXHIBIT-3 shows what Officer Rubie had testified to at the postconviction hearing before Judge Cadigan way back on February 01, 2001, and Judge Cadigan failed to include that in his Memorandum/opinion.

I also would like to STRESS that my appellate lawyer (Mr. Greer) should have but failed to raise this on Direct Appeal. I submit that I previously submitted EXHIBITS 44 and 45 to this Court. These EXHIBITS were part of 51 separate exhibits which I submitted to the Court back on April 13, 2004, and are listed as PAPER NO. 41 on the Federal Docket Sheet.

Exhibit-44 was a letter to Mr. Greer dated April 07, 1999 and informed Mr. Greer to Call Anello's Office to get a firsthand report of what was said since I could not remember everything Anello told me on the phone.

EXHIBIT-45 was a letter to Mr. Greer dated April 15, 1999. In that letter I had asked for Mr. Greer to "Amend my appeal" so that the Court of Special Appeals is aware of what was discussed between Anello and Rubie. Mr. Greer only needed to make a simple phone call to Anello's Office. Not only did he fail to call but he also failed to amend my appeal which left me no choice but to raise it pro se at my postconviction.

My final reasoning as to why I should be granted relief in GROUND ONE is that I believe there was a Brady violation. Since I am without any legal training, I will ask the District Court to consider BOTH the Affidavit of my trial attorney, and testimony from Mr. Anello, and Officer Rubie. I am asking this court to examine EXHIBITS 3 and 4. From what I have been able to learn from case law is that a Brady Violation must have three prongs. FIRST the defendant must show that the evidence was suppressed. SECOND the evidence suppressed must be exculpatory or favorable to the defense. THIRD the evidence must be material to the case.

(FIRST) I believe that EXHIBITS 3 and 4 demonstrate that it is uncontested that Rubie admitted that there was a pretrial conversation that was initiated by the prosecutor which involved an attempt to influence Rubie's testimony regarding a "handgun", and Rubie decided that no harm had occurred because I was not convicted of the "handgun" charges.

(SECOND) This information did not become known until Rubie had volunteered this information to my trial attorney 14 months after trial. Therefore, this information was withheld from the defense. This information was not able to be brought to the attention of the trial court, and is favorable to the defense because it demonstrates prosecutorial misconduct, and violations of Md. Rules of Professional conduct 3.4(b) A Lawyer shall not counsel a witness to testify falsely... Rule 3.8(a) Special Responsibilities of a Prosecutor; and Md. Rule 8.4 (a)(c)(d)(e) Misconduct.

(THIRD) The Affidavit and testimony at the postconviction hearing contained in EXHIBITS 3 and 4 are material to the case and if known prior to this would have necessitated in us presenting this information which was withheld which meant that there was no way that the defense could have known about this until Rubie's complaints to Anello at ORIOLE BALLPARK on April 1999.

THEREFORE this pro se petitioner is asking this Court to grant me the relief that I prayed for in my Habeas Petition regarding GROUND ONE for ANY ONE of the following reasons:

1. I believe that the affidavit and testimony by Anello and Rubie demonstrate that there was a Brady violation that the defense was not aware of during the pretrial stages, and at a minimum should be awarded a new trial or dismissal for prosecutorial misconduct.

2. I believe that Officer Rubie's testimony of "what's the point", and "I don't see how any harm was done" by Mr. Norman is in error because he fails to understand that the HARM lies in the attempt to influence his testimony, and is not dependent on whether or not I was convicted of the fictitious handgun that was shown to a National Television audience by the hired actor who disturbed the facts of the case. Officer Rubie fails to understand that there is U.S.S.Ct. case law that which recognizes that it is the attempt to influence testimony which determines prosecutorial misconduct. See Geders v. U.S., 96 S.Ct. 1330, (1976) which discusses an attempt to influence testimony.

3. I believe that Judge Cadigan failed to recognize that Officer Rubie acknowledged that he erroneously based his willingness to cooperate with Anello ONLY IF I was convicted of the "handgun" portrayed by the hired actor.

4. I also assert that the postconviction court, the State's Attorney Office for Baltimore County, Officer Rubie, and the Attorney General's Office ALL FAIL TO RECOGNIZE that the allegations by Officer Rubie to my trial attorney were withheld from the defense and PREVENTED us from bringing any of Rubie's allegations to the trier of fact since they were not known until 14 months after trial had concluded. See Throckmorton v. U.S., U.S. Cal (1878). These failures and errors are an unreasonable application of clearly established Federal Law as determined by the Supreme Court of the United States.

5. I also believe that the postconviction court, and the Attorney General fail to recognize that I was totally dependent upon Appellate Counsel since I have no legal training, and a limited GED Education. I believe that counsel's failure to investigate had affected and prejudiced my direct appeal because this OMITTED EVIDENCE could have influenced the Appellate Court to send the matter back to Judge Howe who was the trier of fact. These matters were extrinsic to the record and no one can tell how Judge Howe would have ruled if given the opportunity to do so. This opportunity was removed since this information was withheld until Officer Rubie's conversation with my trial attorney at Oriole Park in April 1999. I believe that the postconviction court failed to apply clearly established Federal Law as determined by the S.Ct. in Williams v. Taylor, 120 S.Ct. 1495, (2000). The only thing Counsel had to do was to make a simple phone call to Anello's Office and speak with Anello and then to Amend the Appeal since the appellate court had not yet ruled.

6. I also believe that these errors and omissions by Appellate Counsel demonstrate that counsel was ineffective on appeal as I was entitled to under Evitts v. Lucey, 105 S.Ct. 830 (1985). That court held that the right to effective assistance of counsel on appeal is guaranteed by the Due Process Clause of the XIV Amendment.

7. I further assert that I was denied effective assistance of counsel on Appeal as determined by Strickland v. U.S. 104 S.Ct. 2052, (1984). I must remind the court that during the entire time of my direct appeal, Counsel had (1) Failed to visit with me to discuss my appeal. (2) Counsel failed to speak with me by phone. (3) Counsel failed to raise a single issue contained in any of my 10 letters addressed to counsel at his home/office in Bel Air Maryland. I believe that the Constitution of the United States would at least REQUIRE Appellate Counsel to at least visit me or speak with me by phone.

8. Lastly I believe that I have demonstrated in GROUND ONE that the testimony by my trial attorney and Officer Rubie at the postconviction hearing demonstrates that the prosecutor had violated several Rules of Professional Conduct, and Denied me Due Process of Law as guaranteed to me by the XIV Amendment due to the Prosecutor's attempt to influence the testimony of Officer Rubie.

I further allege that each Md. Rule of Professional Conduct violated has a corresponding disciplinary rule.

Those Md. Rules of Professional Conduct which I believe were violated by the prosecutor were as follows:

1. Md. Rule 3.4(a) which states that "A lawyer SHALL NOT counsel or assist a witness to testify falsely..." I believe that Rubie's testimony in EXHIBIT-3 acknowledges that the prosecutor had attempted to influence his testimony.

2. I also believe that EXHIBITS 1, 2, and 4 which are the transcript testimony of my Trial Attorney who has been a member of the Maryland Bar and Officer of the court for more than 25 years also indicates prosecutorial misconduct.

Md. Rule 8.4 MISCONDUCT:

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the rules of professional conduct...

(c) engage in conduct involving dishonesty fraud or deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice."

I believe that Officer Rubie's testimony regarding his willingness to testify only if I had been convicted of the "gun" charges shows MISCONDUCT and violations of subsections (a)(c) and (d) of Md. Rule 8.4 .

I end my "legal" argument regarding GROUND ONE by stating that Judge Cadigan, the postconviction judge was in error and failed to recognize long established Federal Law regarding the Due Process Clause of the XIV Amendment when he stated at pages 17 and 18 of his memorandum/opinion the following statement:

"The only evidence offered is Mr. Anello's recollection of Officer Rubie's statements... Even if Mr. Anello's recollection of the exchange between himself and Officer Rubie at Camden yards is accurate, the statements do not establish that Mr. Norman violated any of the Rules of Professional Conduct... The petitioner has put forth no evidence that Mr. Norman committed prosecutorial misconduct or violated any of the Maryland Rules of Professional Conduct..."

THEREFORE I believe that I have demonstrated that I was Denied Due Process of Law, and the right to a Fair Trial based on my trial attorney's affidavit that the arresting officer had alleged to him 14 months after my trial the prosecutor attempted to influence his testimony prior to trial and for use at trial.

This concludes my argument regarding GROUND ONE.

Warden, Division of Corrections
Case Numbers 96-CR-3299 & 96-CR-4281

1 it was the best of your ability in the attached affidavit
2 that you could recall the events of meeting with Officer
3 Rubie in a ball game, is that correct?

4 A. Correct.

5 Q. How long have you been a member of Maryland Bar?

6 A. Twenty-five and a half years.

7 Q. Have you ever put forth any such affidavit to any
8 court since you have been practicing law of this nature?

9 A. No.

10 Q. Mr. Anello, you have known me for ten years;
11 why did you feel it necessary to provide me with this
12 affidavit?

13 A. I have handled somewhere between one thousand to
14 maybe 1300 criminal matters as a general practitioner over
15 25 years and I have never in those 25 and a half years had
16 a police officer of any jurisdiction come up to me 14
17 months or so after a case and tell me that my client had
18 a raw deal. It was quite memorable. And I, before I wrote
19 you, I discussed it with a couple of judges, a couple of
20 lawyers, who are friends of mine, and the consensus was
21 that I had to follow up and try to talk to him in a more
22 conservative environment other than opening day of Oriole
23 baseball and find out if it was a serious statement that he
24 made to me and if it was, I then had a duty to tell you or
25 your new attorney.

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1 Q. When was it that you actually put down in writing
2 this conversation?

3 A. I never put it down in writing.

4 Q. Well?

5 A. Oh, you mean --

6 Q. Ten months after the conversation, it gets
7 transcribed?

8 A. I dictated it into a dictaphone.

9 Q. But until that time, it was just a matter that
10 you trusted your memory as to the quotes and things that
11 are in this affidavit?

12 A. Yes, sir, I have a photographic memory, same way
13 I studied for the Bar exam.

14 Q. Is it possible that photograph was a little out
15 of focus by the time you did this?

16 A. All due respect, Mr. Roscher, this had never
17 happened to me before. Nothing was out of focus. I am
18 actually sorry the officer even talked to me. It's not
19 something you expect at opening day at Oriole Park,
20 something that never happened to me in 25 years. You
21 remember something like that.

22 Q. You discussed with Mr. Spinnato whether or not
23 to elect a Jury trial; is that correct?

24 A. Yes.

25 Q. And in the end?

9X1101-2

1 talked about, that's when we talked about the, what a good
2 guy he really is, if he would have gone straight and he
3 was a very nice guy and that he felt as though Sal was
4 wrong in the amount of time that he got and he thought
5 that Mickey was overzealous in the case.

6 Q. Okay. Did he appear to be upset about the
7 convictions themselves or the resulting sentence?

8 A. I think it was the more the sentencing, the time.

9 MR. ROSCHER: Court's indulgence one moment,
10 please.

11 (There was a pause in the proceedings.)

12 BY MR. ROSCHER:

13 Q. There's a statement in the affidavit that says
14 that you said, Look, if Sal had been convicted on the
15 handgun charges, I probably would cooperate with you and
16 feel a lot different with you. However, since he wasn't
17 convicted of the handgun charges, I really don't see how any
18 harm was done by Mr. Norman. Do you recall saying that?

19 A. I don't recall saying those words. I believe it
20 might have been more in the lines of saying, hey, what's
21 the point, he didn't get convicted of the handgun violation,
22 responding to his thoughts on it.

23 MR. ROSCHER: Nothing further, Your Honor.

24 THE COURT: Anything further of the officer,
25 Mr. Spinnato?

C-1011715

1 A. Yes, the night of the appointment, he called me
2 approximately an hour before he was supposed to arrive as a
3 courtesy and told me he was not going to come. I was very
4 upset about that and I asked him why. And he indicated to
5 me that he had talked with others and I assumed he meant
6 superiors, but it could have been a lawyer, I don't know,
7 but he had talked to others and they advised him he should
8 not come with me at that point.

9 And then I, we, but he did then proceed to talk
10 to me some more by telephone. He basically indicated to
11 me that because you were found not guilty in regard to the
12 handgun charges, that basically no blood, no foul, that,
13 you know, there was no harm done in that he had never
14 really altered his testimony on the handgun at the urging
15 of Mr. Norman and you were not found guilty of it.

16 I tried to communicate to him that that mandatory
17 portion of use of the handgun use of a felony changed the
18 trial tactics and everything else. If everybody knew that
19 was not true, it should have been dismissed, it would have
20 changed our election of Judge or Jury trial.

21 And he basically said, at that point he said to
22 me that he would have felt differently if you were convicted
23 and he would cooperate. But in that you were not convicted
24 of the handgun, he could not see how you were harmed. He
25 also said he thought in discussing with others that he was

EXHIBIT 4

REDIRECT EXAMINATION

BY MR. SPINNATO:

Q. I just wanted to clarify one thing. When you had the meeting with Mr. Anello initially at the ball game, it was about three weeks later he called you on the phone approximately, according to his affidavit, and at that time you still had agreed to come down, you didn't have any reservations at that time; that's what the affidavit says and that's what you also agreed to, is that correct?

A. Yes.

Q. But then a week later, the meeting was cancelled one hour before?

A. Correct.

Q. You called to cancel it. Okay. As far as -- Your Honor, I am sorry, I don't want you to yell, but I wanted to ask him one more thing about the Unsolved Mysteries program, about the difference he saw and did you say I could or could not do that?

THE COURT: Go ahead.

BY MR. SPINNATO:

Q. When you saw that there was a handgun pointed to his head, didn't you say, that's not what was reported? Did you think something was different?

A. I am going to be honest, I don't remember the episode as much. I can't go back and recall. I don't

EXHIBIT-5